

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1996 SESSION

<p>FILED</p> <p>August 30, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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STATE OF TENNESSEE,

Appellee,

V.

DAVID COX,

Appellant.

)
) C.C.A. No. 03C01-9510-CC-00328
)
) Blount County
)
) Honorable D. Kelly Thomas, Jr., Judge
)
)(Revocation of Probation)
)
)

FOR THE APPELLANT:

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FOR THE APPELLEE:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
 Judge

OPINION

The appellant, David Cox, appeals the trial court's revocation of his probation. We affirm.

The appellant was convicted by a jury of felonious possession of cocaine. He received an eight-year sentence, sixty days of which was to be served in the county jail, and the balance to be served on supervised probation.

The appellant has violated probation on several occasions. His first probation violation warrant alleged nonpayment of costs, fees, and restitution in addition to a positive marijuana test. Following a revocation hearing, the trial court modified his probation conditions. The modification required him to serve weekends in the county jail until the end of the current semester term at the University of Tennessee. The appellant was later arrested for failing to comply with his weekend restrictions. The trial court then imposed an eighteen-day sentence, beginning from the date of arrest, for this noncompliance.

The appellant's next probation violation warrant alleged that he failed to make any substantial effort to pay court costs, fines, and restitution; that he tested positive for cocaine use; that he failed to report; and his admitted use of alcohol. Following a revocation hearing, the trial court revoked the appellant's probation and ordered him to serve the remainder of his sentence.

The appellant contends that the record contains insufficient evidence to support a finding of any material violation of his probation conditions. Alternatively, the appellant contends that the trial court abused its discretion by revoking his probation and reinstating the balance of the sentence.

Trial judges have the authority to revoke probation upon finding violations of probation conditions. Tenn. Code Ann. § 40-35-310 (1990). The

existence of a violation need only be supported by a preponderance of the evidence. Tenn. Code Ann. § 40-35-311 (d) (1990). To uphold a probation revocation, we must find that the trial judge has not acted arbitrarily and has exercised a conscientious judgment in making the revocation decision. State v. Smithson, No. 01C01-9411-CC-00385, slip. op. at 2 (Tenn. Crim. App. Apr. 20, 1995); Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980).

Trial judges assess witness credibility at probation revocation hearings. State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). A judge's findings carry the weight of jury verdicts. Id. To show abuse of discretion, the appellant must demonstrate that the record is devoid of evidence supporting the judge's findings of a violation of a probation condition. Id.

The record clearly supports the revocation of probation. The appellant has not carried his burden of showing an abuse of discretion. Accordingly, we hold that the trial judge made a conscientious decision in revoking the appellant's probation. The action was not arbitrary. We find no abuse of discretion. The appellant can only blame himself for going to prison. The judgment of the trial court is AFFIRMED.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

DAVID G. HAYES, Judge